

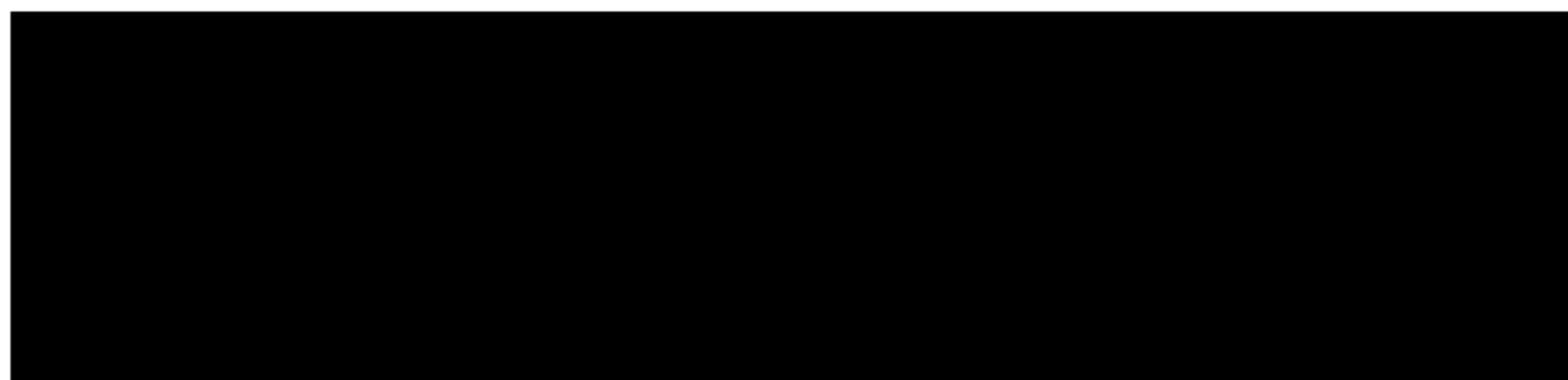
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B5

Date: **AUG 02 2012**

Office: TEXAS SERVICE CENTER

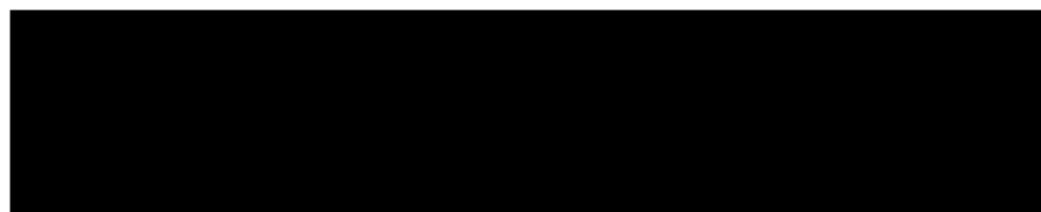
FILE:



IN RE:

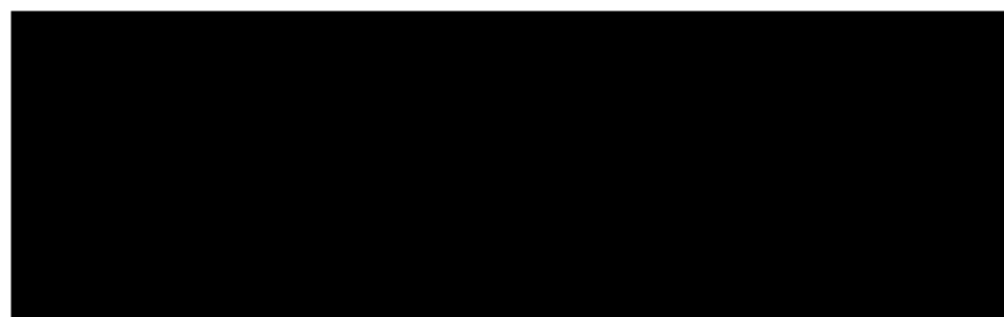
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

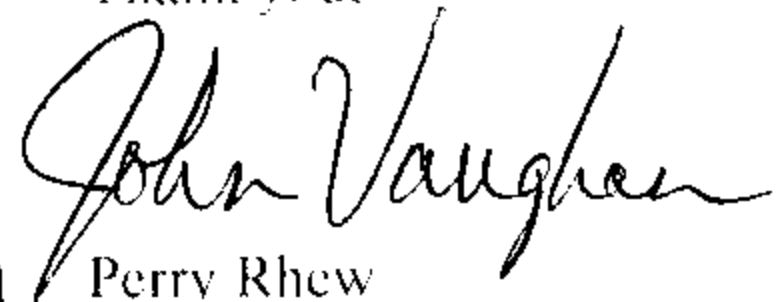


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

for 
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a printing company. It seeks to employ the beneficiary permanently in the United States as a director of international marketing accounts development pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning as of the priority date of the visa petition and that the beneficiary did not satisfy the minimum level of education stated on the labor certification. The director denied the petition accordingly.

The AAO issued a Notice of Intent to Dismiss (NOID) and Request for Evidence (RFE) on April 4, 2012.¹ The AAO requested evidence to establish that the petitioner has had the ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and continuing up to the present. Specifically, the petitioner was instructed to submit tax returns or audited financial statements for the petitioner for 2008, 2009, 2010, and 2011 and Forms W-2 or 1099 (if any) for the beneficiary for 2008, 2009, 2010, and 2011.

The AAO also explained that it consulted a database that did not equate the beneficiary's credentials to a U.S. baccalaureate degree. The AAO noted that the labor certification requires a bachelor's degree plus five years of experience or seven years of experience in lieu of a bachelor's degree. Since the job offer portion of the labor certification does not require a professional holding an advanced degree or the equivalent, or an alien of exceptional ability, this petition could not be approved pursuant to section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2).

This office allowed the petitioner 12 weeks in which to respond to the NOID/RFE. The AAO specifically alerted the petitioner that failure to respond to the NOID/RFE could result in dismissal of the appeal. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). More than 12 weeks have passed and the petitioner has failed to respond with proof that it has the ability to pay the beneficiary the proffered wage and that the beneficiary possesses the required education for the offered position.

Thus, the appeal will be dismissed as abandoned. *See also* 8 C.F.R. § 103.2(b)(13).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

¹ The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).